

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GRACIE BAKED LLC,)
) 1:22-CV-04019-RPK-VMS
)
Plaintiff,) Brooklyn, NY
) October 17, 2024
vs.) 10:07 AM
)
GIFTROCKET, INC.,)
)
Defendants.)

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE VERA SCANLON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (All present by video or telephone):

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1 THE COURT: All right. This case is Gracie Bake, LLC
2 versus Gift Rocket, Inc., 22-cv-4019. So let's start with
3 Counsel's appearances. So first we'll go with the plaintiffs.

4 MR. RAPHAEL JANOVE: Good morning, Raphael Janov on
5 behalf of Plaintiffs.

6 THE COURT: Okay. And then how about the GiftRocket
7 defendant?

8 MS. MEGAN O'NEILL: Good morning, Your Honor. Megan
9 O'Neill, on behalf of GiftRocket defendants.

10 THE COURT: All right.

11 MS. KATHERINE BURGHARDT-KRAMER: Good morning, Your
12 Honor. This is Katherine Burghardt-Kramer as well, on behalf
13 of the GiftRocket defendants.

14 MR. KEVIN WESTERMAN: Good morning, Your Honor. This
15 is Kevin Westerman, also on behalf of the GiftRocket
16 defendants.

17 THE COURT: All right. How about for the bank?

18 MS. GINA TONN: Good morning, Your Honor. This is
19 Gina Tonn on behalf of Sunrise Banks.

20 THE COURT: Okay. Anybody else? No. Okay. All
21 right. So we're having this to check-in. So we have your
22 status report. I saw that the status report had inadvertently
23 left off the exhibit with the 197. And then you asked the 200
24 for us to strike that. I'm not going to strike the pleading.

25 I'll just note that it was a mistake, and we're just



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1 having this conversation based on 198. So big picture. It
2 seems like you've done a lot of work. Have a lot of work
3 planned. And throughout the letter say that you're still
4 working on trying to resolve things.

5 So I think what would be helpful here is maybe
6 highlight what, if any, of these things do you think is ripe
7 for resolution now. I know there's a little bit of a
8 disagreement -- or there was anyway -- a little bit of a
9 disagreement about that, and also, if there's any update on any
10 of the issues.

11 For example, one thing that's mentioned in your letter
12 is a subpoena dispute, but the suggestion is that litigation
13 over that should start in another district. Whether it gets
14 transferred here or not is an open question for the judge.
15 Whoever gets it in whatever district, they commence that.

16 And then there are some other issues. Well, I don't
17 know which category everything is in. If you think it's right,
18 maybe there's nothing left in the area that you're still
19 working on. I hope not, but we'll see. And then if there's
20 anything else that you think we should know, and as always,
21 I'll ask you if there's any settlement possibility, although I
22 know there's a lot of motion practice in this case, so maybe
23 not.

24 But I ask. So maybe let's start with plaintiffs. Go
25 to Defendants. We'll start with the corporate defendants, not



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1 the banks, and go to the banks, and then if we need to go back
2 to Plaintiff, go back to Plaintiff. So start there.

3 MR. JANOVE: For sure. Thank you, Your Honor. So I
4 think the parties have made a lot of progress, and we've
5 narrowed some issues of dispute. We're actively working on
6 discovery schedules. We had a long meet and confer next week
7 to help obviously resolve the remaining issues.

8 I think we are prepared to move to compel on a few
9 items and will work with Defendants on a briefing schedule so
10 we can make a joint letter. But certainly, we have requests
11 for financial documents related to the new entities, which we
12 mentioned in our motion.

13 We have a request for a certain set of search terms to
14 be run over custodial documents related to the restructuring.
15 Coming out from yesterday, we have a few disputes, having
16 passed over a certain RFP related to breakage. And we also are
17 hoping to meet and confer early next week regarding the
18 30(b)(6) topics.

19 To the extent we can't resolve that, obviously, we'll
20 move to compel. I think the first 30(b)(6) deposition is
21 tentatively scheduled for November 19th. So those are the main
22 issues. Obviously, I think we need to have some relief related
23 to SouthState Bank.

24 There was a follow-up meet and confer, but it seems
25 that GiftRocket still is standing on its NDA. We are waiting



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1 to hear back from SouthState Bank regarding our proposal for
2 discovery, and that might be able to move the issue, but if
3 not, we'll proceed with motion practice in the appropriate
4 court.

5 There's one other issue I'd like to bring up that
6 likely will be a subject of discovery practice soon is that
7 last week, the defendants went to serve two people related to
8 Cafe Ole. First, a former employee, and the second is the new
9 owner.

10 Defendants have also asked to depose an owner of
11 WeCare. We plan to oppose those. The third parties were just
12 served yesterday, so we need some time to confer with them.
13 But I'm just previewing for the Court that we likely are going
14 to move for a protective order in the appropriate places
15 regarding those depositions.

16 And then I think the last thing I just want to flag is
17 both Sunrise and GiftRocket have promised substantial
18 completion of discovery by November 1st. I think we're
19 generally on track to complete discovery and depositions by
20 December 13th, the current deadline.

21 I just flagged that there's still a fair amount of
22 discovery that hasn't yet been produced, and we'll need some
23 time to evaluate that and see if additional discovery is
24 warranted. So I could -- well, I hope to avoid it. I could
25 imagine that we either have motions to compel or additional



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1 discovery requests that would require some additional
2 productions after December 13th and also, why we'd like to
3 avoid it is potentially reopening potential deponents that deal
4 with some of the new documents that we have that are being
5 produced.

6 I hope we avoid it, but I just want to flag that as a
7 potential issue down the road. I do want to confirm that we
8 intend to complete discovery as currently scheduled.

9 THE COURT: Okay. Maybe I'm just asking you to
10 refresh, but what is breakage? You said there were RFPs about
11 that.

12 MR. JANOVE: Oh, yeah. So breakage is when a gift
13 card is not redeemed or this is not a GiftRocket, but a gift
14 card. But when a GiftRocket is not used, defendants get
15 breakage revenue over time. If people never use the
16 GiftRocket, the defendants get all the profit.

17 So we have some requests related to that, and that's
18 what we're working on with Defendants.

19 THE COURT: Okay. So your thought -- just so I have a
20 little bit of a more full sense of what's outstanding --
21 there's the discussion in your letter about there's a fairly
22 lively 30(b)(6) disagreement, but there's a suggestion -- I
23 think probably more strongly made by defendants -- that after
24 you do a couple more depositions, there may be clarity on
25 what's really necessary and who the witnesses should be.



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1 Are you more on board with that, or are you not? I'm
2 just trying to get an idea of the scope of the disagreement.

3 MR. JANOVE: Yeah. Certainly. So we've had three
4 individual depositions. We haven't gotten confirmation on any
5 dates for a 30(b)(6), but yesterday, Defendants offered
6 30(b)(6) dates. So now that we have that confirmation, I think
7 we just want to meet and confer over the scope.

8 I think we would like to propose that the 30(b)(6)
9 that goes first would be the GiftRocket, LLC or Tremendous,
10 LLC, but the main corporate entity would have the knowledge of
11 most of the topics. But otherwise, we planned, now that we
12 have dates, just to move ahead, meet and confer, hopefully,
13 early next week.

14 And we don't think waiting on additional individual
15 defendants is going to change the scope of what we ask. In
16 fact, in some respects, if we can get the 30(b)(6) depositions
17 done earlier, it might help narrow some of our discovery
18 disputes or some of our questions in the case so that we could
19 potentially narrow the scope of further deposition testimony or
20 document requests afterwards.

21 But I am hopeful that we can just come to an agreement
22 with Defendants on 30(b)(6) topics and at least take one in the
23 near future and then move on without motion practice. Oh --

24 THE COURT: Okay.

25 MR. JANOVE: -- and Your Honor, can I mention one last



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1 item? I apologize. We also have live (indiscernible) disputes
2 over the privilege designations on the text message. It's a
3 pretty simple motion, so we'll move to compel shortly on that
4 as well.

5 THE COURT: Okay. Just to go to the range of dates
6 for the 30(b)(6) that were proposed, what's the outside of
7 that?

8 MR. JANOVE: I think the first date that they proposed
9 yesterday was November 19th.

10 THE COURT: Oh, that was the date you mentioned
11 earlier for the first. And the last of the window, which is
12 the close of the window that they're proposing.

13 MR. JANOVE: Yeah. So December 13th. So yesterday we
14 got dates and --

15 THE COURT: (Indiscernible).

16 MR. JANOVE: -- yeah. So they've given us dates for
17 November 19th, which doesn't work -- I mean, November 19th,
18 which we plan to take the first 30(b)(6), November 21st, which
19 doesn't work, and the defendants have also offered depositions
20 December 3rd, 4th, 5th, 6th, 9th, 10th, 11th and 13th.

21 We'll have to pack in a lot. Obviously, November 1st
22 we're going to get a lot of new documents. We're going to get
23 documents from Sunrise. We haven't gotten much to date. We
24 still need to take the Sunrise deponents. But at least we
25 think it's November 1st with Defendant's new production.



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1 At least by November 19th, we can have a very
2 productive 30(b)(6) and have gotten most of the documents that
3 we need to hopefully avoid ever having to reopen a 30(b)(6)
4 topic.

5 THE COURT: Okay. I mean, obviously, the background
6 question for me is, are you going to conclude discovery on the
7 current date or if it needs to be adjusted, what's the least
8 but practical adjustment, but I'm not asking you for an answer
9 to that yet, but it is going to be kind of one of the
10 concluding questions because it seems like from summarizing,
11 there are some issues that you probably are going to be able to
12 work out, there's some that are going to be motion practice,
13 and there is uncertainty because you don't you, I don't know,
14 know, none of us know, how the other venues and the other
15 districts will deal with this.

16 And hopefully, it's clear to them we're happy to take
17 the dispute, but I understand it has to start where it is. So
18 okay. So how about for the GiftRocket defendants? Your
19 thoughts. If you want to just respond. I'm trying to get the
20 overview. Your letter was super helpful.

21 It's a little bit more on either development or
22 priorities, what's likely coming in, and obviously, with the
23 background question, of, are you going to finish in
24 mid-December or if not, how much more time, but you don't have
25 to particularly answer that yet.



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1 Okay. So your thoughts on where you are, where you're
2 going?

3 MS. BURGHARDT-KRAMER: Sure. Thank you, Your Honor.
4 This is Katherine Kramer for the GiftRocket defendants. I
5 think at this point, there's nothing that's ripe right now. It
6 sounds like there's a variety of topics that we're still
7 negotiating over with the plaintiffs, some things that might
8 end up in front of the Court at some point soon, but nothing
9 today that's ripe.

10 I think that we're still definitely on track for the
11 close of discovery on December 13th. It might mean that we're
12 doing a bunch of depositions in December, but I think given
13 everybody's availability in the first couple of weeks of
14 December, I think we should be able to get everything done.

15 I will note we've been working diligently to propose
16 dates for the remaining depositions. There have been a variety
17 of dates that we proposed for October and November that the
18 plaintiffs have not been available. So that's required us to
19 go back to the drawing board a few times, but we're still
20 working on it.

21 And it looks to me like we'll be able to fit
22 everything in before the December 13th close of discovery.

23 THE COURT: Okay.

24 MS. BURGHARDT-KRAMER: And then in terms of SouthState
25 Bank, we're still meeting and conferring on that. We had a



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1 productive conversation between the plaintiffs and the
2 GiftRocket defendants and SouthState Bank a couple of weeks
3 ago, and then we had some follow-up emails.

4 I will note that counsel for SouthState Bank is in
5 Florida, and obviously, Florida was recently hit with a couple
6 of hurricanes. I expect that that's why we haven't been able
7 to hear back from counsel for SouthState Bank. But I expect
8 that at some point relatively soon, we'll be able to continue
9 the meet and confer conversations.

10 After we had some discussions with Plaintiff's
11 counsel, they were able to narrow the scope of what they were
12 looking for. So I think we just need to continue the
13 conversation, and I remain hopeful that we'll be able to work
14 things out.

15 I think there's also other potential sources of
16 information about SouthState Bank, namely us, who have already
17 produced some information about this, and we'll be including
18 additional information in our upcoming production. So I think
19 at this point, I think we're on track.

20 The parties are working well together. We continue to
21 have a lot of discussions. As Mr. Janov mentioned, we had a
22 lengthy meet and confer yesterday and have had other
23 meet-and-confer discussions. So I think at this point we'll
24 continue trying to get the depositions scheduled and move ahead
25 with all of that.



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1 THE COURT: Okay. And then your thoughts about the
2 Cafe Ole, what might happen there? The owner or the employee?

3 MS. BURGHARDT-KRAMER: At this point, there's nothing
4 pending in front of the Court on that issue. I think that
5 there's a serious question of whether they still have standing,
6 but plaintiffs have taken the position that they do, and
7 there's nothing -- we haven't filed anything yet that the Court
8 to rule on that issue.

9 THE COURT: But do you think they're going to? I just
10 want to know if they're going to be straggler issues or not.

11 MS. BURGHARDT-KRAMER: It's hard to say. As Mr. Janov
12 mentioned, we served some additional discovery on some
13 individuals who had not been previously identified. It came up
14 during the deposition of WeCare that happened last month, and
15 we'll go ahead with that.

16 It's obviously something that will require some
17 coordination in terms of timing, but I think at this point we
18 anticipate taking that additional discovery but remaining in
19 touch with plaintiffs about the coordination of dates and
20 things like that.

21 THE COURT: Okay. So it sounds -- well, all right.
22 Anybody else on the defendants' side want to say anything? No.
23 All right. It sounds like you're full steam ahead, but a
24 couple of issues might lead to motion practice. So what are
25 you thinking?



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1 This is a self-interested question about when is this
2 going to show up on my docket. Motion practice that was
3 mentioned as a possibility. Some motions to compel. What are
4 you thinking? Yeah, because if you can make the mid-December
5 deadline, that's the best because obviously the case has been
6 around.

7 There's extensive motion practice. It'd be good to be
8 able to keep it moving forward, and we don't want to be the
9 drag on it. So to the extent these things are going to lead to
10 motion practice, I guess two practical questions. The
11 possibility of a briefing schedule is mentioned, but on my
12 side, I'd like to have some idea of what you're thinking about
13 in terms of dates and some idea in terms of scope.

14 As long as things are not too long, I generally prefer
15 the letters. They tend to be more helpful, more focused, but
16 if you think that these are full-on motions that need a lot of
17 pages, then that's a bigger project for everybody. So for the
18 things that you may not be able to work out, what are you
19 thinking?

20 MR. JANOVE: Your Honor, if I may, I think just doing
21 joint letters, which we've been doing which have been generally
22 five pages on each side, is all we need to do. Some of these
23 issues are not long to brief. We definitely want to keep
24 things moving and are mindful of the December 13th deadline.

25 So I think at least for the motions that we plan to



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1 move to compel on, we'd like to send our sections sometime, or
2 at least not all, a fair amount of what we want to see motion
3 practice onto defendants, by next week. They have like three
4 days to respond, and then we could file our joint letters the
5 week of October 27th.

6 Or I could say maybe by Halloween, we should finish
7 the meet and confer process and have everything filed that
8 needs to be filed. And it might not all happen at once, but
9 just so we can try to get these motions to you sooner as
10 opposed to later.

11 THE COURT: Okay. So what does that translate into in
12 terms of a maybe actual filing date?

13 MR. JANOVE: So if we get defendants all of our
14 sections by the end of next week, say Friday, October 25th,
15 that would give them three days to respond. Or we could extend
16 it out to that October 31st, where we're filing all of our
17 motions.

18 I don't know if that works for defendants.

19 MS. O'NEILL: Hi, this is Megan O'Neill for GiftRocket
20 defendants. So given it's not clear how many motions there
21 are, I would want our team to have more than -- if they're all
22 going to be sent to us in eight days -- three days to turn
23 around. If we knew the number, it's one. That's fine.

24 If it's five, I would want to just work out a briefing
25 schedule that is a little more equitable on that front with



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1 plaintiffs, which we wouldn't want to take the Court's time to
2 do, but that we would prefer to do it that way. But I do agree
3 with Plaintiff's counsel that sooner rather than later would be
4 great.

5 Some of these are fairly simple issues, like on the
6 text messages on common interest privilege, which I think is
7 the only one that's ripe from our perspective. But in any
8 event, the number, it makes a difference in terms of the
9 answer.

10 MR. JANOVE: Your Honor, may I propose a solution? We
11 are actually already writing a summary of our meet and confer
12 with Defendants yesterday. We were kind of planning to outline
13 what we plan to move to compel on. I think make it clearer.
14 We'll send Defendants a summary today of our meet and confer
15 outstanding issues, and we can propose that we're moving to
16 compel on these handful of issues.

17 There's not going to be many, but probably three or
18 four, however many issues are, and then we can just propose a
19 briefing schedule in that email to defendants today. And then,
20 we'll work with Megan on the timeline to do that. Where we're
21 both aimed to get this to the Court sooner as opposed to later,
22 but obviously, of course, taking into account everyone's
23 respective schedules.

24 THE COURT: Okay. Just looking at the calendar. All
25 right. Is it practical to say that any motion to compel as to



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1 the ripe issues, we would get by November 6th at the latest?

2 MR. JANOVE: For plaintiffs, yes. I think it could be
3 sooner than that. I mean, some of the motions are essentially
4 drafted. But certainly, by November 6th. I would maybe
5 encourage us not just ripe issues now, but that we hope to meet
6 and confer with defendants early next week on 30(b)(6)s and any
7 additional topics.

8 There is some follow-up that we try to get all of our
9 motions to compel, (indiscernible) possible, done by November
10 6th. Or sorry, actually -- I apologize. November 6th, we have
11 a deposition of Defendant. Would it be possible to say by
12 November 8th all outstanding motions to compel are filed on the
13 docket, and we'll work internally on internal deadlines for
14 sharing sections?

15 THE COURT: I mean, that's fine on my end. I think, a
16 couple of things. I appreciate the global letters. If there's
17 something that is just definitely a motion and ready to go
18 before that, you can file just that letter. It's okay if
19 it's -- from my perspective, there's a difference between the
20 informative, maybe we're working it out, flagging the issue.

21 That's super helpful. But if it's a motion -- I'm
22 sorry. And those letters, the global is the best because I get
23 the overall picture. But on motions, it doesn't matter to me
24 whether it's all together in one, or a motion to compel, say,
25 or privilege issues is one letter and a motion to compel for --



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1 I'm making this up -- but maybe if some piece of the SouthState
2 dispute belongs here -- not saying it does, but just as an
3 example -- and that's a separate letter.

4 That's fine. Or the global approach. But my point
5 being is you don't have to wait till November 8th. It sounds
6 like there's a lot of moving pieces, including that pretty big
7 production that the defendants are working on. So from
8 Defendant's side, it might be kind of crowded to do it before
9 that.

10 So whatever you all want, I appreciate your working
11 hard. The momentum seems like a good idea to keep going. And
12 you know, I just want to be able to plan our schedule so that
13 we don't become a roadblock to moving things ahead. So okay,
14 is November 8th -- does that work for the defendants' counsel?

15 MS. BURGHARDT-KRAMER: Yes, Your Honor. This is
16 Katherine Kramer for the GiftRocket defendants. I think that's
17 fine. My hope is that we can continue working with plaintiff's
18 counsel and addressing some of these issues. I think that
19 there's obviously a fair amount of additional discovery that's
20 going to be done over the coming months -- well, I guess two
21 months -- for depositions and things like that.

22 So I think some of the issues the plaintiffs have
23 raised are basically they're trying to find out additional
24 facts. And I think a lot of that we may be able to make
25 progress on that through, to some extent, the supplemental



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1 production that's coming by November 1st and then also with
2 depositions.

3 Sometimes the best way to get information is to ask a
4 question in a deposition rather than try to get it through
5 documents. But we'll see what the issues are. I think we've
6 been working productively with the plaintiff's counsel on a lot
7 of these issues.

8 So our preference would be individual joint letters.
9 If there are issues that need to go to the judge, then November
10 8th sounds okay.

11 THE COURT: Okay. All right. So let's aim for that
12 and then why don't we see what comes out of that and then
13 probably would ask you for a status letter by the end of
14 November. But why don't we tentatively pencil that in, and at
15 that point, you can let me know what, if anything, might go
16 past the mid-December deadline.

17 So just looking at November -- let's say December 2nd.
18 Feel free to do it before Thanksgiving if you want. But we'll
19 push it out a little bit. It's up to you. All right. So
20 things are moving along steadily. You're going to -- any
21 motions to compel of your brief on November 8th, but may be
22 submitted in part before that, and a status letter that first
23 Monday in December.

24 All right. Anything else that you want to come out of
25 here today?



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1 MR. JANOVE: Your Honor, if I may. To be clear, we
2 won't wait until November 8th. We certainly are going to send
3 at least two, potentially three, very discrete motions to
4 compel to the defendants next week. At least some of that will
5 get briefed sooner as opposed to later.

6 I just actually have one issue that would affect a
7 potential joint briefing schedule that's actually pretty live,
8 and that's regarding the November 1st date. Defendants want to
9 depose three individuals. On that date, one of the owners of
10 WeCare, the person that purchased Cafe Ole, and also to depose
11 a former employee.

12 When we spoke yesterday at the meet and confer, I said
13 we don't think that these depositions are proper. We need time
14 to speak with the third parties and see if they want to secure
15 additional counsel. Defendant said that we need to provide
16 additional dates or they'll go forward with November 1st.

17 So we're not in a position to provide additional
18 dates. We don't think they're appropriate. So I do think --
19 unless defendants are willing to hold off on November 1st,
20 allow us to meet, confer, and brief the issue, we will have to
21 move for a protective order here quickly, and also, where they
22 issued the subpoena, which is in the Eastern District of
23 Pennsylvania.

24 THE COURT: Okay. So which deposition do you think
25 would be before this Court? Who's the person?



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1 MR. JANOVE: So potentially one of the owners of
2 WeCare. That motion would be here. The other two potentially
3 would be -- that's the former employee, Mary (ph.), who
4 assisted with discovery, and also Anna (ph.), who purchased the
5 cafe -- that would be in the Eastern District of Pennsylvania.

6 THE COURT: Sorry, I'm confused as to why you think --
7 I mean, we haven't talked about the merits of this, but are you
8 objecting to the WeCare former owner? The two people, Anna and
9 Mary, you object but that's in Pennsylvania. What is the
10 problem with the other depositions?

11 MR. JANOVE: So the other deposition, we think it's
12 not seeking relevant information and it's duplicative. WeCare
13 is already answered. I think it will be, by next week, 60
14 RFPs. They've had a corporate representative sit for a long
15 deposition, a bunch of interrogatories, and admissions.

16 Their representative, Lawrence Kalkman (ph.), is the
17 individual at that company that's been involved that testified
18 about the lawsuit, and Danny (ph.) is an owner that essentially
19 has had no involvement other than the fact that Lawrence has
20 told him about the lawsuit, and Lawrence is in charge of
21 directing this lawsuit.

22 So there's really no point to have this deposition.
23 And it just doesn't seem to be asking for anything of
24 relevance. And we'll brief the issue. There's a pretty good
25 case law under the apex doctrine about it not being proper to



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1 just depose an owner that doesn't have much knowledge about the
2 action when there's other sources of that information, which,
3 of course, include the 30(b)(1) and 30(b)(6) deposition that
4 was taken of Lawrence Kalman and all the discovery and
5 interrogatory responses and RFAs in this case.

6 THE COURT: Okay. Are you really objecting to an
7 owner? I mean, it's not a huge business. I don't know how
8 Apex would really apply to this based on what you said.

9 MR. JANOVE: I think --

10 THE COURT: It's not like there's been so many
11 depositions, it's exhausting. Whether it yields what the
12 defendants hope, I don't know, but -- and the whole notion that
13 somebody shouldn't be deposed because they're not the one
14 directing a deposition doesn't really speak to their knowledge
15 of the business operations.

16 MR. JANOVE: So I appreciate that point, Your Honor.
17 I think part of this is also we only got this on Thursday
18 evening, so we need to obviously speak with him and have a
19 better understanding from Defendants of what they are seeking
20 from Danny, and why it needs to be in a deposition, and among
21 other reasons, why they're insisting on a deposition in person
22 versus just doing it remotely like they did for Lawrence and
23 WeCare.

24 And the other issue --

25 THE COURT: Okay. Sorry.



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1 MR. JANOVE: -- I guess the point being that we'd like
2 to have time to meet and confer with defendants on this, and
3 they're saying that if we don't give them alternative dates for
4 November 1st right now, they're going to move forward with
5 November 1st.

6 THE COURT: All right. Not to not hear from the
7 defendants on the issue, but based on everything you've said, I
8 don't think you have a great objection to the deposition
9 happening. If you can work out the date issue or there's more
10 information that you haven't yet gathered from the witness that
11 would affect the analysis and you're not successful in having
12 the conversation, you could put in a joint letter motion about
13 it.

14 It would be super helpful if you would flag it right
15 up front as time-sensitive. But so far, you're not succeeding
16 on saying this deposition shouldn't happen. So Defendant, you
17 can weigh in, but I don't know about weighing in on a possible
18 win is a great idea.

19 You're ahead right now.

20 MS. BURGHARDT-KRAMER: Sure. Thank you, Your Honor.
21 I'll try not to snatch defeat from the jaws of victory here. I
22 think on this issue, it just seems like this is a new issue
23 that's come up. I don't really think it's really proper to
24 bring it up to Your Honor, because we're here to talk about
25 issues that were presented in the joint filing.



Colloquy

1 This is a new issue. The Court doesn't have the full
2 context of what's going on. We're more than happy to continue
3 talking to Plaintiff's counsel about dates. We talked about it
4 yesterday. I said, give us new dates and we're happy to try to
5 work something out and also continue talking about whether
6 these are in person or if they're remote, do we do them all on
7 the same day, or do we do them on different days?

8 There's issues about who's going to be counsel for
9 these three individuals as well. So I think all three of them
10 are -- they're clearly people with relevant knowledge. We've
11 only taken three depositions so far, so we're well within the
12 number of depots that we can take.

13 I think at this point, as Your Honor was indicating,
14 the correct path forward is for us to continue talking to
15 Plaintiff's counsel about it, and I expect we'll be able to
16 work something out. I think at least one of these individuals,
17 I expect, is going to have separate counsel.

18 I think there is some conflict of interest issues as
19 well that would likely preclude Mr. Janov from representing all
20 three of them, but we'll continue talking about those issues.
21 I don't think there's anything that the Court needs to rule on
22 or address further today.

23 THE COURT: Okay. So hopefully, you've worked out
24 many things. You'll work this out. But if not, and there
25 needs to be a quick answer because of an impending deposition



Colloquy

1 that one side thinks shouldn't happen, like I said, the letter
2 is fine.

3 Just make sure that we know that it's something that
4 you need a quick answer on. Okay. All right. So I look
5 forward to getting whatever it is that remains open after
6 you've continued your discussions. And again, I think it
7 sounds like you're really doing a lot of work, so I appreciate
8 that.

9 All right. Thanks. Have a good day. Take care.

10 MS. BURGHARDT-KRAMER: Thank you, Your Honor.

11 IN UNISON: Thank you, Your Honor.

12 (Proceedings concluded at 10:44 o'clock, a.m.)

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C E R T I F I C A T I O N

I, Jeannine McFee, court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



December 9, 2024

Jeannine McFee, CDLT-147

DATE

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